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7 Attorneys for Defendant
8 VARIAN MEDICAL SYSTEMS, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNIVERSITY OF PITTSBURGH OF THE
COMMONWEALTH SYSTEM OF HIGHER
EDUCATION d/b/a UNIVERSITY OF
PITTSBURGH, a Pennsylvania non-profit
corporation (educational),

Plaintiff,

v.

VARIAN MEDICAL SYSTEMS, INC., a
Delaware corporation,

Defendant.

Case No. CV 08 2973

**NOTICE OF PENDENCY OF OTHER
ACTION OR PROCEEDING**

Related Case:

Case 2:07-cv-00491-AJS

USDC, Western District of Pennsylvania

Pursuant to Civil L.R. 3-13, Defendant Varian Medical Systems, Inc. ("Varian") hereby notifies the Court of the following action in the United States District Court, Western District of Pennsylvania:

*UNIVERSITY OF PITTSBURGH, Plaintiff, v. VARIAN MEDICAL SYSTEMS, INC.,
Defendant*, Case No. 2:07-cv-00491-AJS, filed on April 13, 2007.

The Western District of Pennsylvania action involves the same parties as the above-captioned action and is based on the same patents, U.S. Patent Nos. 5,727,554 and 5,784,431. The complaints in the two actions assert identical causes of action under 35 U.S.C. § 271.

On November 21, 2007, Varian filed a summary judgment motion for lack of standing in the Western District of Pennsylvania action.

On March 10, 2008, special master Donald E. Ziegler recommended that summary judgment be granted. On April 30, 2008, District Court Judge Arthur J. Schwab partially adopted the recommendation, granted Varian's summary judgment motion and dismissed the action with prejudice.

7 On June 16, 2008, Judge Schwab entered judgment in favor of Varian and dismissed
8 Plaintiff's claims with prejudice. Varian's counterclaims for a declaratory judgment of non-
9 infringement and invalidity were dismissed without prejudice. On the same day, Plaintiff filed a
10 Notice of Appeal in the Western District of Pennsylvania action, and also filed the complaint in
11 the above-captioned action.

13 || Dated: June 20, 2008.

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Zheng Liu
Zheng Liu
Attorneys for Defendant

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2 **CERTIFICATE OF SERVICE**
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4 I hereby certify that a true and correct copy of the NOTICE OF PENDENCY OF OTHER
5 ACTION OR PROCEEDING was served upon the University of Pittsburgh, through its counsel,
6 via:
7

- 8 _____ Hand-Delivery
9 _____ Facsimile
10 _____ First Class, US Mail, Postage Prepaid
11 _____ Certified Mail-Return Receipt Requested
12 X ECF Electronic Service
13 _____ Overnight Delivery

14 at the following addresses:
15

16 Rita E. Tautkus
17 Morgan Lewis & Bockius, LLP
18 One Market – Spear Street Tower
19 San Francisco, CA 94105
20 rtautkus@morganlewis.com

21 Dated: June 20, 2008

22 _____
23 /s/ *Zheng Liu*
24 Zheng Liu

25 OHS West:260459551.2

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